Financial Consumer Agency of Canada | Agence de la consommation en matière financière du Canada

Report on Best Practices in Financial Consumer Protection

Presented to the Minister of Finance

Commissioner of the Financial Consumer Agency of Canada

May 31, 2017

Canada

May 31, 2018
Cat. No.: FC5-54/2018E-PDF
ISBN: 978-0-660-26686-2

© Her Majesty the Queen in Right of Canada, as represented by the Financial Consumer Agency of Canada, 2018

Ce document est aussi disponible en français sous le titre Rapport sur les pratiques exemplaires en matière de protection des consommateurs de produits et services financiers.

Table of Contents

Executive summary 1

I. Context 4

A. Objective 5

B. Scope and methodology 6

a) Provincial and territorial landscape 6

b) International landscape 7

c) Federal landscape 7

II. Provincial and territorial landscape 8

A. Current landscape 8

B. Institutional arrangements 8

a) Funding 10

b) Policy-making authority 10

C. Entities supervised 10

D. Financial consumer protection measures in legislation, codes, and commitments 11

a) Legislation 11

b) Codes and commitments 12

E. Complaint-handling procedures 12

F. Supervisory approaches and enforcement 13

a) Supervisory approaches 13

b) Enforcement tools 14

G. Consumer redress models 15

a) Mediation and other alternative dispute resolution (ADR) systems 16

b) Statutory remedies 16

c) Redress in enforcement proceedings 19

d) Private enforcement 19

H. Consumer education and awareness 21

I. Collaboration and engagement 21

III. International landscape 23

IV. Federal landscape 26

A. Current landscape 26

B. Institutional arrangements 26

a) Funding 27
b) Policy-making authority 27
C. Supervised entities 27
D. Financial consumer protection measures in legislation, codes and commitments 28
E. Complaint-handling procedures 29
a) Bank complaint-handling procedures 29
b) Consumer complaints to FCAC 30
F. Supervisory approach and enforcement 30
a) Supervisory approach 31
b) Enforcement 32
G. Consumer redress model 34
H. Consumer education and awareness 34
I. Collaboration and engagement 35
V. Findings and observations 37
a) Institutional arrangements 37
b) Financial consumer protection measures in legislation, codes and commitments 38
c) Complaint-handling procedures 40
d) Supervisory approach and enforcement 41
e) Consumer redress models 43
f) Collaboration and engagement 44
VI. Conclusion 45
VII. Appendix – List of provincial and territorial authorities contacted 46

Executive summary

The Government of Canada is committed to modernize and enhance the federal financial consumer protection framework in the *Bank Act*. To meet this objective, the Minister of Finance asked the Commissioner of the Financial Consumer Agency of Canada (FCAC) to identify best practices in financial consumer protection in place across the country.

As part of its review, FCAC assessed the legal landscape underlying financial consumer protection regimes at the provincial-territorial level, analysed regulators' approaches to compliance and enforcement, examined complaint-handling procedures and redress mechanisms available to consumers, and engaged with provincial and territorial authorities to better understand the regimes in place within their jurisdictions. In parallel, FCAC considered international best practices and the current federal financial consumer protection framework.

Consumer protection regimes vary across jurisdictions, including the types and levels of protection afforded to financial consumers.

The best practices comprising a strong financial consumer framework identified by FCAC's review include the following:

1. A regulator is specifically responsible for overseeing financial consumer protection

In most provincial-territorial jurisdictions, consumer protection authorities have broad mandates to oversee general consumer protection, while a prudential regulator may also play a role in supervising financial sector market conduct. At the federal level, regulators are specifically mandated with the oversight of the financial sector, with FCAC being explicitly responsible for overseeing financial consumer protection measures.

2. A standalone legal framework establishing clear minimum standards to protect financial consumers

Most provincial and territorial jurisdictions have general consumer protection laws that apply to all types of products and services. While these provisions may cover financial products and services generally, they are often not written to specifically address financial products and services. The federal financial consumer protection framework is based on standalone legislation applicable to banks and implemented by a regulatory agency whose sole focus is the protection of financial consumers.

3. Legislation providing for the fair treatment of financial consumers at all stages of their relationship with financial service provider

Most provinces and territories prohibit unfair practices. Certain harmful practices are prohibited under the *Bank Act*, such as coercive tied selling or charging for products or service without the consumer's express consent. There are currently no general provisions prohibiting unfair treatment more broadly under the federal regime.

4. Legislation setting out enforceable principles

A number of international jurisdictions have adopted market conduct principles and developed approaches to support their implementation. In Canada, both the provincial-territorial and federal financial consumer protection regimes are rules-based rather than principles-based.

5. Legislation requiring prominent disclosure of key information

Cost of credit disclosure legislation is largely harmonized between the provincial-territorial and federal jurisdictions, with the exception of Quebec, Nunavut and Yukon. This body of legislation specifies disclosure obligations with respect to fees, interest, terms and penalties on borrowed amounts as well as when disclosure should be provided.

Canada's federal financial consumer protection framework includes comprehensive disclosure requirements for certain products such as credit cards and loans. However, it does not require a prominent display of key features for all financial products and services as has been suggested by international benchmarks.

6. Legislation prohibiting misleading practices, such as misleading advertising

Most provincial-territorial consumer protection laws prohibit misleading statements and representations to consumers. The federal framework prohibits misleading information or representations in advertisements but only for certain specific financial products.

7. Consumers having access to alternative dispute resolution systems

Some provincial-territorial consumer protection regulators provide alternative dispute resolution services free of charge, including mediation. Federally, financial consumers have access to a third party dispute resolution system, but do not have access to mediation services.

8. Legislation providing regulators with the power to compel compliance

At the provincial-territorial level, regulators can compel businesses to comply, as well as the manner in which they must do so. While FCAC has a number of enforcement tools at its disposal, it does not have the authority to compel compliance.

9. Legislation promoting transparency with consumers

Many provincial-territorial consumer protection regulators inform consumers about the status and outcome of their complaint. However, federally, the legislation prohibits FCAC from informing individual consumers about the outcome of investigations regarding their complaint. FCAC publishes aggregate information about complaints received, and uses complaint information to inform supervision, research, and consumer education efforts.

Some provincial and territorial regulators are required by law to publish enforcement actions, including the violator's name, the nature of the violation, and the penalty imposed. At the federal level, the Commissioner has the discretion to make public the nature of a violation, the name of the person who committed it, and the penalty imposed.

10. Consumers having access to affordable, independent and impartial redress mechanisms

Provincial and territorial legislative regimes provide consumers with access to a wide range of redress mechanisms, including statutory rights to resolve disputes through the court system. In the majority of jurisdictions, claims can be pursued individually by consumers or by a class of consumers. Under the federal regime, consumers can use the third party dispute system to seek redress on an individual basis, but the recommendations of third party complaint bodies do not extend to classes of consumers.

11. Consumers having access to different remedies in the event of non-compliance by financial institutions

Provincial-territorial consumer protection laws include provisions granting consumers access to various remedies if businesses have not complied with their obligations. Depending on the legislation and how it applies to specific financial products and services, consumers may be able to access remedies including contract cancellation, contract variation, damages and restitution.

Overall, Canada's federal financial consumer protection framework aligns with some of the practices recommended in international standards. However, certain measures and practices were noted in international standards and observed at the provincial-territorial level that do not currently exist under the federal framework. The most notable differences between the provincial-territorial jurisdictions, international standards and the federal framework are in the areas of access to redress and remedies, and the prohibition of unfair practices. Some of these elements could be introduced in the federal scheme to further enhance the financial consumer protection framework.

I. Context

> *"Consumer confidence and trust in a well-functioning market for financial services promotes financial stability, growth, efficiency and innovation over the long term. Traditional regulatory and supervisory frameworks adopted by oversight bodies contribute to the protection of consumers [...]*
>
> *It is essential to protect consumers' rights while also recognising the fact that these rights do come with consumer responsibilities. This calls for legal recognition of financial consumer protection, oversight bodies with necessary authority and resources to carry out their mission, fair treatment, proper disclosure, improved financial education, responsible business conduct by financial services providers and authorised agents, objective and adequate advice, protection of assets and data from fraud and abuse, competitive frameworks, adequate complaints handling and redress mechanisms and policies which address, when relevant, sectoral and international specificities, technological developments and special needs of vulnerable groups. This approach complements and builds upon financial regulation and supervision and financial governance."*[1]
>
> G-20 High-Level Principles on Financial Consumer Protection

Over the last decade, significant advances have been made to strengthen financial consumer protection, both domestically and globally. A number of international jurisdictions have now adopted market conduct principles and developed approaches to support their implementation. The adoption of principles by these jurisdictions has resulted in a broadened oversight, allowing them to supervise, *inter alia*, business practices, governance, dispute resolution, redress and product suitability.

To keep pace with international best practices, the Government of Canada committed to developing a comprehensive financial consumer protection code,[2] which would:

- better protect consumers of financial products and ensure that they have the necessary tools to make responsible financial decisions
- be adaptable to suit the needs of consumers of today and tomorrow in a rapidly evolving and innovative financial marketplace
- respond to the realities of a digital and remote banking environment and the needs of vulnerable Canadians
- provide the exclusive and comprehensive consumer protection regime that applies to products and services offered by banks anywhere in Canada, and the basis for consumer

---

[1] G20-OECD Task Force on Financial Consumer Protection. (2011). *G20 High-Level Principles on Financial Consumer Protection*. Retrieved from http://www.oecd.org/regreform/sectors/48892010.pdf

[2] Government of Canada. (2013). Developing a Comprehensive Financial Consumer Code. In *Economic Action Plan 2013*. Retrieved from http://www.budget.gc.ca/2013/doc/plan/chap3-5-eng.html

protection for federally regulated financial institutions, replacing a currently dispersed mix of legislation and regulations
- be simple and clear in expressing the government's expectations of accountable financial institutions
- be enforceable and provide criteria by which actions can be assessed.[3]

In December 2013, the government launched a public consultation to seek input on a proposed financial consumer protection framework.

In October 2016, the government tabled a new framework as part of the *Budget Implementation Act, 2016, No. 2* (Bill C-29). Division 5 of Bill C-29 modernized the existing financial consumer protection framework by consolidating existing consumer provisions in the *Bank Act*, and incorporating enhanced and targeted consumer protection measures to better respond to Canadians' changing needs. Bill C-29 also included principles to guide the interpretation of the consolidated provisions and set out an exclusive regime applicable to bank products and services.[4]

In mid-December 2016, the Minister of Finance (the Minister) requested the removal of the financial consumer protection provisions from Bill C-29. At the same time, the government reaffirmed its commitment to modernizing the framework, indicating that the federal regime should provide the highest overall level of protection for Canadians. In support of that aim, the Minister tasked the Commissioner of the Financial Consumer Agency of Canada (FCAC) with the mandate that is the subject of this report.

A. Objective

In January 2017, the Minister asked FCAC's Commissioner to engage with provincial and territorial regulators and other key stakeholders to identify best practices in financial consumer protection in place at the provincial-territorial level. As part of the review, the Commissioner was to assess provincial and territorial consumer protection frameworks and identify the protections afforded to financial consumers, examine the oversight and enforcement tools to monitor compliance, and consider the efficiency, timeliness and equitableness of complaint-handling and redress mechanisms. The Minister requested that the Commissioner report her findings by May 31, 2017.

---

[3] Government of Canada. (2013). *Canada's Financial Consumer Protection Framework: Consultation Paper*. Retrieved from https://www.fin.gc.ca/activity/consult/fcpf-cpcpsf-eng.asp

[4] Government of Canada. (2016). Division 5 – Financial Consumer Protection Framework. In *Bill C-29: Budget Implementation Act 2016, no. 2*. Retrieved from http://www.fin.gc.ca/pub/C29/04-eng.asp#div5

B. Scope and methodology

To meet its objective, FCAC undertook a review of financial consumer protection measures under provincial and territorial jurisdictions and considered international best practices.

The scope of FCAC's review focused on domestic consumer protection measures that can apply to financial products and services, such as credit products and deposit products, other than measures in securities and insurance law.[5] Measures that address broader industry risks and issues, such as competition and prudential concerns, were also outside the scope of this review. While this review compares relevant rules in all Canadian jurisdictions, the specific circumstances of each province and territory play a major role in determining good practices and feasible, effective measures.[6]

a) Provincial and territorial landscape

To prepare for discussions with provincial and territorial authorities, FCAC reviewed the legal landscape for financial consumer protection in Canada. The Agency examined cases (primarily class actions) in each province and territory and analysed the various regulators' approaches to compliance and enforcement.[7] FCAC also looked at the efficiency, timeliness and fairness of complaint-handling procedures and redress mechanisms available to consumers.

FCAC also engaged with provincial and territorial authorities responsible for overseeing consumer protection and financial services, to gain a better understanding of the existing regimes. Through this engagement, FCAC collected information on how the authorities administer their respective financial consumer protection measures. Much of the information collected was subsequently validated through legal analysis.

In addition, FCAC engaged with key stakeholders to seek input on specific matters related to financial consumer protection and considered the submissions provided by stakeholders as part of the 2013 Department of Finance consultation on elements that could strengthen Canada's financial consumer protection framework.[8]

---

[5] While we did not review consumer protection laws related to securities and insurance, we considered securities and insurance regulators and how they cooperate with one another.

[6] Circumstances can include resources available to regulators, priorities outlined by governments and issues affecting consumers in the provinces and territories.

[7] A list of the regulatory authorities and policy-makers contacted by FCAC is provided in the appendix.

[8] The full list of public responses submitted as part of *Canada's Financial Consumer Protection Framework: Consultation Paper* is available at: https://www.fin.gc.ca/consultresp/fcpf-cpcpsf/fcpf-cpcpsf-eng.asp

b) International landscape

FCAC reviewed the *G20 High-Level Principles on Financial Consumer Protection* (G20 High-Level Principles) and related documents,[9] and the World Bank's *Good Practices for Financial Consumer Protection*, and compared them with the existing federal framework.

c) Federal landscape

FCAC considered the federal scheme as it exists under the *Bank Act*, including the institutional arrangement underlying its financial consumer protection regime. FCAC also reviewed its own supervisory approach, including its monitoring and enforcement activities and powers. In addition, FCAC also assessed complaint-handling procedures and redress mechanisms available to financial consumers under the federal regime. Finally, the review captured the collaboration and engagement initiatives led by, or involving, FCAC that help enhance financial consumer protection and the Agency's efforts in promoting consumer education and awareness.

[9] G20-OECD Task Force on Financial Consumer Protection. (2014). *Effective Approaches to Support the Implementation of the Remaining G20/OECD High-Level Principles on Financial Consumer Protection*. Retrieved from https://www.oecd.org/daf/fin/financial-education/G20-OECD-Financial-Consumer-Protection-Principles-Implementation-2014.pdf; G20-OECD Task Force on Financial Consumer Protection. (2013). *Update Report on the Work to Support the Implementation of the G20 High-Level Principles on Financial Consumer Protection*. Retrieved from: https://www.oecd.org/daf/fin/financial-education/G20EffectiveApproachesFCP.pdf

II. Provincial and territorial landscape

A. Current landscape

Provinces and territories play a key role in regulating financial sector market conduct. Most provinces and territories have general consumer protection regimes that apply to all types of products and services, as well as specific legislation that addresses certain types of financial products and services. Many provinces and territories also engage in consumer awareness and education initiatives to inform consumers about their rights and responsibilities.

Provincial-territorial regulatory regimes oversee a wide range of financial entities, such as insurance companies, trust and loan companies, credit unions, and securities firms. Generally, financial institutions incorporated in one province or territory can only operate within that jurisdiction.[10] Certain entities, notably credit unions, insurance companies and trust and loan companies, can be incorporated either provincially or federally, and as a result may operate in both federal and provincial-territorial jurisdictions. When incorporated federally, these firms are subject to federal oversight, including by FCAC. Insurance companies and trust and loan companies are also required to comply with provincial-territorial rules governing business conduct.[11]

Provincially incorporated credit unions are subject to provincial prudential and market conduct regulation, and must adhere to general provincial consumer protection legislation unless exempted therefrom. In Ontario, for example, financial products and services that are regulated under the *Credit Unions and Caisse Populaires Act* are excluded from the application of the *Consumer Protection Act*.

B. Institutional arrangements

While institutional arrangements generally vary by jurisdiction, common models have emerged over time. The following table provides an overview of the current provincial and territorial institutional models across Canada.

---

[10] However, certain provinces, such as British Columbia (BC), have passed legislation permitting an authorized financial institution to operate outside its province of incorporation. A credit union or insurance company incorporated in Alberta, for example, could be given authorization to operate in BC.

[11] At the federal level, FCAC has a limited role in the market conduct supervision and regulation of insurance companies. FCAC's oversight is generally limited to non-insurance products and services (like credit products),complaint-handling procedures, and corporate social responsibility reporting.

Twin peaks model
Single agency model for consumer protection and financial sector oversight
General consumer protection agency model (no prudential regulator)

Twin peaks model		
One regulator serves as the prudential regulator, and may play a supporting role in consumer protection for specific financial entities, products or services. A separate regulator is usually responsible for general consumer protection measures, including those applicable to financial products and services. Depending on the circumstances giving rise to a breach under the consumer protection legislation, the consumer protection regulator may allow the financial institution's prudential regulator to take the lead in addressing consumer protection violations.		
	Prudential regulator	**Consumer protection authority**
Alberta	Treasury Board and Finance	Service Alberta
British Columbia	Financial Institutions Commission	Consumer Protection BC
Manitoba	Manitoba Financial Services Agency	Office of Consumer Protection (Manitoba Justice)
Newfoundland and Labrador	Credit Union Deposit Guarantee Corporation	Service NL
Nova Scotia	Finance and Treasury Board	Service Nova Scotia
Ontario[12]	Financial Services Commission of Ontario	Ministry of Government and Consumer Services
Prince Edward Island	Credit Union Deposit Insurance Corporation	Justice and Public Safety
Quebec	Autorité des marchés financiers	Office de la protection du consommateur

Single agency model for consumer protection and financial sector oversight	
A single regulator is responsible for general consumer protection, prudential oversight and financial market conduct oversight.	
New Brunswick	Financial and Consumer Services Commission
Saskatchewan	Financial and Consumer Affairs Authority

General consumer protection agency model (no prudential regulator)	
One regulator is responsible for general consumer protection, including financial products and services.	
Northwest Territories	Municipal and Community Affairs
Nunavut	Department of Community and Government Services
Yukon	Department of Community Services

[12] Ontario is moving towards the integrated single agency oversight model by introducing the *Financial Services Regulatory Authority of Ontario Act*, 2016, S.O. 2016, c. 37, Sched.8. Available at: http://www.ontario.ca/laws/statute/16f37

While the regulators listed in the table above are responsible for financial consumer protection oversight, they may delegate some of their oversight responsibilities to other bodies. For example, Saskatchewan's Financial and Consumer Affairs Authority relies on the Credit Union Deposit Guarantee Corporation to supervise provincially incorporated credit unions. The Corporation must ensure that credit unions have the appropriate internal policies, procedures and controls to comply with consumer protection requirements.

a) Funding

Consumer protection authorities are typically funded through licensing fees, service fees, administrative monetary penalties (AMPs) and other charges paid by the entities they regulate. Excess funds usually are remitted to the provincial government's general revenue fund, although some jurisdictions use these funds for consumer protection or educational initiatives. Under the BC *Business Practices and Consumer Protection Act*, for example, certain penalties, such as AMPs or penalties ordered by the court, are deposited into the Consumer Advancement Fund. This fund is used for purposes such as consumer education and activities targeted at increasing compliance.

Other regulators, such as Manitoba's Consumer Protection Office, are funded through government appropriations.

b) Policy-making authority

Policy-making authority can reside with either the provincial or territorial consumer protection regulator or a separate government ministry/department. For example, the New Brunswick Financial and Consumer Services Commission has the authority to develop its own regulations in certain areas. In British Columbia, policy-making authority resides with the Ministry of Public Safety & Solicitor General.

In most jurisdictions, regulators provide input into policy decisions and legislative and regulatory amendments before they are introduced. For example, Consumer Protection BC provides subject-matter expertise and support as part of the government policy-making process.

C. Entities supervised

Pursuant to their respective legislation, provinces and territories regulate a wide range of entities, products and services related to the financial sector. For example, in many jurisdictions debt collectors, payday lenders, provincial credit unions, credit intermediaries and prepaid gift cards issuers are overseen by provincial-territorial consumer protection regulators. Given their role in general consumer protection, provincial-territorial regulators also oversee many non-financial entities, such as cemeteries, funeral homes, direct sellers, home inspectors and telemarketers.

D. Financial consumer protection measures in legislation, codes, and commitments

a) Legislation

Consumer protection provisions tend to be dispersed in statutes which may also cover general consumer protection, prudential regulation, corporate governance and incorporation, as well as in laws that are specific to certain products and services.

Most provinces and territories have consumer protection laws that apply to products or services generally, including to financial products and services that fall under provincial jurisdiction. In addition, some provinces and territories have consumer protection legislation that specifically addresses matters such as disclosure and business practices. All provinces and territories have legislation that governs the disclosure required for credit products – also referred to as "cost of borrowing" or "cost of credit" legislation – which, with the exception of Quebec, Nunavut and Yukon, is generally harmonized.[13] Typically, cost of borrowing legislation applies to credit products, including revolving credit (e.g., lines of credit and credit cards), loans for a fixed amount for a fixed term, loans and credits secured by mortgages and, in some cases, on-demand loans. Prescribed disclosure must be provided to a borrower in an initial disclosure statement before or at the time the borrower enters into a credit agreement. Further, depending on the type of credit, subsequent disclosure statements may be required monthly, quarterly, or annually. As discussed under "Consumer redress models" below, failure to provide the required disclosure can give rise to various types of consumer redress. Prepaid purchase cards (also known as gift cards) may also be subject to general or specific legislation.

In some cases, legislation that applies to a specific type of financial institution (e.g., credit unions) will govern the financial products and services of that type of institution.

In summary, statutory authority related to the oversight of financial products and services can exist in general consumer protection legislation, specific legislation governing credit products, financial institution statutes, or any combination thereof.

Finally, all provincial general consumer protection legislation, with the exception of New Brunswick, prohibit businesses[14] from engaging in unfair or unconscionable practices or require them to observe certain practices with respect to specific products and services, such as credit products. As in the case of disclosure obligations, failure to comply with these requirements can give rise to statutory rights of consumer redress.

---

[13] Consumer Measures Committee. (1998). *Agreement for the Harmonization of Cost of Credit Disclosure Laws in Canada*. Retrieved from https://www.ic.gc.ca/eic/site/cmc-cmc.nsf/vwapj/Cost%20of%20Credit%20Disclosure.pdf/$file/Cost%20of%20Credit%20Disclosure.pdf

[14] Legislation may refer to businesses as suppliers, merchants, lenders, creditors, etc. For the purposes of our report, all of these will be referred to as "businesses" unless context requires otherwise.

b) Codes and commitments

Few voluntary codes of conduct and public commitments are overseen by provincial and territorial consumer protection regulators. These codes typically include high-level requirements such as promoting the interests of clients, maintaining client confidentiality, avoiding conflicts of interest, and not engaging in fraud or misrepresentation.

The Saskatchewan *Market Code Handbook*[15] (the Code) is comparatively more comprehensive than codes of conduct in other provincial-territorial jurisdictions in terms of addressing market conduct in the financial sector. The Code was issued by SaskCentral, the liquidity manager and service supplier for Saskatchewan credit unions. Rather than regulating credit union market conduct through legislation, Saskatchewan allows the industry to regulate itself through the Code. All credit unions in Saskatchewan currently adhere to the Code, but have the option of adopting their own code of conduct if approved by the regulator.

The Code sets out market practice standards related to fair sales, transparency and disclosure, professional standards, privacy of personal information and complaint handling. For example, credit unions are prohibited from engaging in coercive tied selling, negative option billing, misrepresentation and discrimination.

E. Complaint-handling procedures

Complaint-handling procedures requirements are similar to those found in federal legislation. Generally, responsibility for resolving complaints rests with the service provider. Consumers initiate the process by raising their complaint with front-line staff, such as a credit union customer service representative; if not satisfactorily resolved, the complaint may then be escalated to more senior staff. If, in the end, the service provider cannot resolve the complaint, it may be escalated further to a third-party ombudservice (if available). In New Brunswick and Saskatchewan, for example, complaints related to credit unions may be escalated to the Credit Union Ombudservice Atlantic Central or the SaskCentral Ombudsman, respectively. In Saskatchewan, consumers who are dissatisfied with the resolution recommended by the SaskCentral Ombudsman may file their complaint with the Ombudsman for Banking Services and Investments (OBSI).

In some provincial-territorial jurisdictions, the regulator does not resolve individual complaints; rather, it investigates them to determine whether a violation has occurred.

Most regulators communicate with consumers who have filed complaints to inform them about the course of action taken and to report on the complaint's outcome once the file is closed.[16]

---

[15] SaskCentral. (2013). *Market Code Handbook*. Some credit unions make copies of the Handbook public. See, for example, http://www.newcommunitycu.com/Portals/0/Documents/Market%20Code%20Final%20Handbook%202013.pdf

[16] This is the case with Manitoba's Consumer Protection Office, New Brunswick's Financial Consumer Services Commission and Saskatchewan's Financial and Consumer Affairs Authority.

Some regulators track complaints to determine whether a review of an institution's practices is warranted. Many regulators prioritize complaints based on criteria including:

- the number of individuals affected
- the vulnerability of the consumer
- an assessment of harm to the consumer or to the general public and to public confidence
- the seriousness of the breach, the history of the business and criminality.

F. Supervisory approaches and enforcement

a) Supervisory approaches

Many provincial and territorial regulators operate licensing and registration regimes for various sectors. As part of this gatekeeping function, regulators can assess the suitability of agents and entities, deny entry to those deemed unsuitable and suspend or revoke licences. Registration and licensing can also serve as a means of verification for consumers seeking service providers. For example, Quebec's Office de la protection du consommateur offers consumers a tool called "Get information about a merchant," which compiles information about the licences and formal notices issued to merchants.[17]

Provincial and territorial regulators have a variety of tools at their disposal to inform businesses of their consumer protection obligations, monitor businesses' activities and enforce compliance. They regularly communicate with the firms they oversee to ensure their obligations are well understood. In British Columbia, for example, Consumer Protection BC's website informs regulated firms about the law, their obligations, and Consumer Protection BC's enforcement activities. The Financial Services Commission of Ontario publishes information about its regulatory framework, including its principles of regulation, and information about how it monitors, investigates and takes enforcement action.[18] On its website, l'Autorité des marchés financiers du Quebec explains the obligations of deposit-taking institutions, representatives and registrants,[19] and outlines its approach to supervision in its Financial Institutions Supervisory Framework.[20]

Provincial and territorial regulators monitor businesses through a variety of means, such as complaint tracking and inspections. Complaints received are used as a main monitoring tool to inform enforcement activities. For instance, the Office de la protection du consommateur's

---

[17] The "Get information about a merchant" tool allows the consumer to conduct searches by merchant. See Office de la protection du consommateur. (n.d.). Get information about a merchant. Available at http://www.opc.gouv.qc.ca/en/information-merchant/

[18] Financial Services Commission of Ontario. (2016). How FSCO Monitors, Investigates and Where Warranted Takes Enforcement Actions on the Sectors it Regulates. Retrieved from https://www.fsco.gov.on.ca/en/about/monitoring/Pages/monitoring_process.aspx

[19] Autorité des marchés financiers. (n.d.). Regulations and obligations. Retrieved from: https://lautorite.qc.ca/en/professionals/regulations-and-obligations/

[20] Autorité des marchés financiers. (2014). *Financial Institutions Supervisory Framework*. Retrieved from: https://lautorite.qc.ca/fileadmin/lautorite/reglementation/assurances-inst-depot/cadre-surveillance-2014-an.pdf

monitoring activities arise from complaints and denunciations sent by consumers, merchants and consumer associations. Similarly, complaints submitted to the Ontario Ministry of Government and Consumer Services are tracked and may lead to action "including inspection and enforcement activities" if a series of complaints is received.[21] Some regulators also monitor complaint information from outside their jurisdiction. Insurance regulators, for example, use the National Complaint Reporting System, which uses a harmonized classification system for insurance-related consumer complaints.

Regulators also use proactive inspections to assess and monitor businesses. Consumer Protection BC, for instance, advised that its inspections focus on sectors and businesses that generate the highest number complaints from consumers. New Brunswick's Financial and Consumer Services Commission noted that it is moving towards a risk-based approach by undertaking more frequent inspections of problematic sectors. The Financial Services Commission of Ontario, following its life insurance product suitability review, undertook inspections to ensure life insurance agents were complying with requirements.

b) Enforcement tools

The compliance enforcement tools and powers available to provincial-territorial regulators vary across jurisdictions, but generally include moral suasion, AMPs, redress and, in some cases, prosecution.

When a breach of legislation occurs, the first line of action usually involves trying to ensure the business voluntarily corrects the breach. In some cases, the regulator may ask the business to enter into a voluntary undertaking: a signed agreement between the regulator and regulated firm under which the business agrees to meet certain requirements. If a business does not voluntarily agree to correct the breach, the regulator may issue a compliance order directing it to correct the breach, remediate consumers, or change its procedures.[22] In rare cases, the regulator may seek a court order to correct a breach.

Depending on the outcome of an investigation, or if earlier attempts to obtain compliance have been unsuccessful, the regulator may proceed with enforcement action and impose penalties. Enforcement may proceed one of three ways, depending on the circumstances of the case and the powers of the regulator: through administrative proceedings, civil proceedings or prosecution. Regulators with the authority to do so most commonly resort to administrative proceedings, reserving the other methods for more egregious cases. Depending on the province or territory's institutional arrangement for consumer protection oversight, a business may appeal an administrative proceeding to a more senior employee working for the regulator, to a tribunal, or to the courts. At the Financial Services Commission of Ontario, for example, the Superintendent of Financial Institutions may proceed with an enforcement action. Appeals are heard by the Financial Services Tribunal, a distinct arm of the regulator.

---

[21] Consumer Protection Ontario. (2017). Filing a consumer complaint. Retrieved from https://www.ontario.ca/page/filing-consumer-complaint

[22] Depending on the legislation, a compliance order may also be known under another name, such as a director's order.

Other regulators can pursue enforcement actions through civil proceedings. Service Alberta, for example, can institute civil proceedings on behalf of consumers, although this power has not been used to date.[23] Service Alberta is also entitled to seek restitution, remediation or injunctive relief on behalf of consumers. Similarly, some consumer protection regulators, such as the Office de la protection du consommateur, may commence court proceedings in their own name. The regulator may seek redress including injunctive relief, compliance orders, restitution orders and punitive damages. In certain jurisdictions, the court may also order any redress it deems necessary.

Some consumer protection regulators have the authority to prosecute businesses or persons who violate consumer protection statutes, or who commit criminal acts such as fraud. Prosecutions are usually handled by a prosecutor employed by the Ministry of Justice or an equivalent ministry, or they may be handled by the regulator itself. The Financial and Consumer Affairs Authority in Saskatchewan can prosecute those who violate certain statutes it oversees.

A number of regulators do not publish supervisory actions or voluntary agreements unless required by law to do so. By keeping supervisory actions or voluntary agreements confidential, regulators hope to entice businesses to voluntarily comply and avert stronger enforcement action. When they do impose a compliance order or enforcement penalty, provincial and territorial regulators typically publish or publicize it.[24] Consumer protection regulators, including those in British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, Ontario and New Brunswick, make individual enforcement decisions public. Quebec's Office de la protection du consommateur also provides statistics and issues news releases on enforcement actions against the entities it oversees.

G. Consumer redress models

Depending on the provincial legislation and how it applies to specific financial products and services, consumers who are unable to resolve a dispute with a firm may have access to different redress mechanisms and remedies for breaches of consumer protection legislation.

In Quebec, consumers can obtain an information kit from the Office de la protection du consommateur that assists them in resolving their issues with businesses. Each kit explains the legal provisions applicable to common situations and clearly outlines the process to follow to resolve the consumer's issue. The kit also includes a templated demand letter that can be used by the consumer. Information relating to these demand letters can be published on the "Get information about a merchant" section of the Office de la protection du consommateur's website.[25]

---

[23] Service Alberta can institute civil proceedings on behalf of a consumer with the consumer's consent.
[24] Publicize means pushing out the information, such as through news releases.
[25] Office de la protection du consommateur. (n.d.). Get information about a merchant. Available at http://www.opc.gouv.qc.ca/en/information-merchant/

At both the federal and the provincial-territorial levels, financial institutions' complaint-handling procedures are the primary redress mechanism for consumers. Financial consumers in some provinces generally have access to an independent, fair and affordable third party if they cannot resolve their dispute directly with their institution. If that process is unsuccessful, other forms of dispute resolution are available, such as mediation, arbitration and the judicial system.

a) Mediation and other alternative dispute resolution (ADR) systems

Some regulators offer mediation or other dispute resolution services to consumers, even though they may not be required to do so by law. Decisions made through these alternative dispute resolution mechanisms are generally non-binding.

Consumer Protection BC facilitates dispute resolution through an online tool that helps consumers resolve issues with participating debt collection agencies.[26] In Quebec, the Office de la protection du consommateur may encourage consumers to use PARLe, an online platform that assists with dispute settlement. By using this platform, consumers and merchants can negotiate online and, if necessary, use the services of an independent mediator free of charge. Manitoba's Consumer Protection Office provides mediation services for consumer complaints. Its officers remain involved with the consumer and business provider until an agreement is reached. If an agreement cannot be reached, the matter can be brought to court, as the Consumer Protection Office does not have the authority to impose a resolution. The Ontario Ministry of Government and Consumer Services also mediates complaints. If mediation is unsuccessful, the ministry can launch an investigation that could lead to enforcement action against the firm or its principals, such as restitution orders, fines and imprisonment. The Northwest Territories' Consumer Affairs Office acts as an informal intermediary between consumers and businesses, and attempts to bring the parties to a satisfactory resolution of the dispute.

Consumers who are unsuccessful in resolving their issues through an ADR mechanism are free to pursue redress through the court system, where they may be entitled to one of the remedies described below.

b) Statutory remedies

The types of statutory remedies available to consumers can vary by province or territory and, in certain cases, by financial product and service. In Quebec, for example, a loan or line of credit secured by a mortgage on a consumer's residence is exempt from certain statutory remedies that are otherwise available to consumers for other loans or lines of credit.

Provincial-territorial legislation may provide consumers certain rights. For example, in Ontario, consumers benefit from a cooling-off period when entering into certain types of contracts,

---

[26] Consumer Protection BC. (n.d.). Resolve your dispute. Available at: https://www.consumerprotectionbc.ca/get-started

including those for payday loans.[27] In addition, certain legislation provides for a presumption in favour of consumers. In Quebec, for instance, in case of doubt or ambiguity, a contract must be interpreted in favour of the consumer.

In addition to such rights, statutory remedies available to financial consumers under provincial and territorial legislation include:

Contract cancellation

In most provinces and territories, general consumer protection legislation may provide for a cancellation period in certain circumstances.[28] Generally, a consumer may seek to cancel a contract for a product or service if the business has engaged in practices deemed unfair, unconscionable or prohibited, whether before, during or after entering into a contract. This remedy aims to return parties to the state in which they were prior to entering into the contract. In the case of a contract for credit, this would require a lender to refund any interest and other charges, and for the borrower to repay the principal. In Quebec, for instance, the *Consumer Protection Act* states that consumers may demand cancellation of a contract or a reduction of their obligations where the disproportion between the parties' respective obligations is so great that it amounts to the exploitation of the consumer.

The same remedy may also be sought where the consumer's obligations are deemed excessive, harsh or unconscionable. In Ontario, consumers may terminate their contracts as a result of an unfair practice by providing the businesses with written notice of their intention to do so within one year of entering into an agreement. In these circumstances, consumers are entitled to a full refund.

Variation of transaction

Some provinces and territories allow for this remedy, which allows for the terms of an agreement to be modified where they are found to be harsh and unconscionable and the cost of credit excessive.[29] It may also apply where a consumer has been exploited to a degree disproportionate to the business's obligations, or where a creditor has failed to fulfill certain statutory obligations or undertakings. In all cases, a court may reduce the consumer's obligations and order the return of any amounts paid to the creditor. Quebec courts have determined that an annual credit rate higher than 37 percent is equivalent to consumer exploitation.[30] In addition, granting credit to consumers when their economic situation creates too heavy a burden for them in relation to their capacity to repay the debt can be considered exploitation.

---

[27] A cooling-off period refers to a specific number of days during which a consumer can cancel an agreement without reason or penalty.
[28] This remedy is available to consumers in all provincial-territorial jurisdictions with the exception of New Brunswick.
[29] For example, general consumer protection laws in Quebec, Newfoundland and British Columbia allow for this remedy. It is also available under certain acts in some provincial-territorial jurisdictions, including Alberta, Manitoba, Saskatchewan, Ontario, New Brunswick, and Prince Edward Island.
[30] *Bénéficial Canada inc.* c. *Sirois*, B.E. 2000BE-305 (C.Qc).

Compensatory damages

In law, damages typically consist of money that is paid to a person as compensation for a loss.

In most provincial-territorial jurisdictions, a consumer can recover damages for any loss suffered as a result of a breach of the legislation.

Exemplary or punitive damages

Depending on the province or territory, where consumers have the right to cancel a transaction because of an unfair or unconscionable practice by a creditor or other business, a court may, in the appropriate circumstances, award exemplary or punitive damages.[31] Exemplary or punitive damages are awarded to penalize a defendant for particularly egregious, wrongful conduct rather than to compensate a plaintiff for the injury or loss suffered.

In some provincial-territorial jurisdictions, these damages may be awarded where other breaches of the legislation have taken place.

Statutory damages

In some provinces and territories, consumers can recover statutory damages for breaches of legislative requirements in addition to compensatory or punitive damages.[32] If a breach relates to a statement of account, statutory damages may be awarded equal to the borrower's interest and non-interest finance charges. Otherwise, the statutory damages that can be recovered are usually a set amount. In Alberta and Saskatchewan, for example, consumers are entitled to statutory damages of up to $500 when the lender does not meet disclosure requirements, unless there has been an excusable error. These statutory damages are available in addition to other permitted remedies.

Restitution

In some provincial-territorial jurisdictions, the court may order a creditor to return any amount, to a borrower, that should not have been paid because of a prohibition in the legislation (e.g., unlawful prepayment or default charges) or that should have been refunded by a creditor (e.g., non-interest finance charges due on a prepayment).[33] For example, in Alberta, consumers may recover the amount by which the consumer's payment under the transaction exceeds the value of the goods or services provided.

---

[31] Exemplary or punitive damages are available in provincial-territorial jurisdictions including Alberta, Saskatchewan, Quebec, Newfoundland, and the Northwest Territories.
[32] For example, statutory damages can be ordered in Alberta, Saskatchewan, and Newfoundland.
[33] Restitution can be ordered in provincial-territorial jurisdictions including BC, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Newfoundland, and the Northwest Territories.

Recovery of all or part of the cost of borrowing

In some provincial-territorial jurisdictions, failure to disclose the full cost of borrowing as required by legislation entitles the borrower to recover all cost of borrowing charges or the amount by which the cost of borrowing was understated.[34] In Ontario, for example, a consumer may recover overpayments if the consumer is paying more than the amount disclosed in the credit agreement.

Set-off

Some provincial-territorial jurisdictions allow this remedy, which provides the borrower with a statutory right to deduct any money owed by the creditor against the outstanding borrower's balance under the credit agreement.[35] The *Manitoba Consumer Protection Act*, for example, gives borrowers the right to set-off against the outstanding balance of the relevant credit agreement instead of taking payment.

c) Redress in enforcement proceedings

As part of their enforcement authority, certain regulators may obtain redress for consumers. In an administrative proceeding, regulators may require consumer redress as part of voluntary undertakings or compliance orders. Businesses usually must demonstrate that they have made consumers whole.

When it is in the public interest, some regulators may be permitted to commence civil proceedings on the consumers' behalf. In Alberta, for example, the director may bring an action on behalf of a consumer with the consumer's consent, or maintain an action brought by a consumer under the *Fair Trading Act*. The consumer is entitled to receive any compensation resulting from the process.

In terms of prosecution, some regulators may ask the court to order a business to provide redress to consumers. In British Columbia, for example, if a business is convicted of an offence under the legislation, the court may order redress to the consumer.

d) Private enforcement

Access to court system

As a general rule, consumers may seek redress through the provincial or territorial court system. Most small, individual actions are subject to an expedited or simplified small claims court process. In some jurisdictions, such as Ontario and British Columbia, consumers may bring

[34] This remedy is available in provinces and territories including Nova Scotia, Alberta, Manitoba, Newfoundland, and the Northwest Territories.
[35] Available in provinces and territories including BC, Alberta, Saskatchewan, Manitoba, Ontario, Newfoundland, and the Northwest Territories.

a claim of up to $25,000. Consumers who proceed by way of court action are responsible for all related costs.

In some provinces and territories, businesses involved in consumer disputes cannot impose binding mediation or arbitration that might restrict access to the court system. In Saskatchewan, Ontario and Quebec, for example, a prior agreement to submit a dispute arising out of a perceived breach of legislation to arbitration is non-binding. However, a dispute can proceed to arbitration or mediation with the consent of the business and consumer. Alberta allows businesses to include binding arbitration clauses in their consumer contracts, but only upon the approval of the responsible minister (currently the Minister of Service Alberta).

Some provincial-territorial jurisdictions allow consumer organizations to commence legal proceedings on behalf of consumers. In Alberta, for example, consumer organizations may seek injunctive relief for unfair practices on behalf of consumers in the Court of Queen's Bench. In Quebec, consumer organizations routinely bring class actions on behalf of consumers.

Role of class actions and current jurisprudence

Class actions provide a useful mechanism for a class of plaintiffs—which could mean hundreds or thousands of consumers with similar claims—to pursue a defendant and claim compensation.

The vast majority of these actions are brought in the provinces of Quebec, British Columbia and Ontario. Quebec is the jurisdiction where most class actions against financial institutions are commenced. This may be because Quebec's legal regime is more conducive to the certification of class actions than other provinces and allows for punitive damages to be ordered by the courts. The province has also seen a growing trend by plaintiffs to assert claims based on abusive or harsh contractual terms, arguing that contracts containing these terms are unconscionable, regardless of the particular circumstances of the consumers involved.

While class actions complement other administrative and penal sanctions that can be imposed under provincial-territorial legislation, the certification process is typically very time consuming. In addition, the success of class actions is difficult to predict given the small number of cases that ultimately end up being adjudicated by the courts (rather, they usually result in settlements). Finally, given that the awards ordered by the courts must be shared equitably between class members, certain members risk receiving less than they would have otherwise received had they pursued the matter individually.

H. Consumer education and awareness

In addition to monitoring and enforcement, many regulators invest effort and resources in the financial education of consumers.

Consumer education material is typically disseminated through various channels, including consumer websites, online and printed guides, pamphlets and posters, videos, consumer alerts, news releases, social media, promotional items (calendars, decals, etc.), community outreach presentations, trade shows and school and industry events. The Financial and Consumer Services Commission of New Brunswick, for example, recently launched an innovative web-based trivia game called Fortune that involves trivia questions for adults and children on topics such as saving, smart spending, fighting fraud and more.

I. Collaboration and engagement

Provinces and territories collaborate with one another on consumer protection and financial sector issues to share information, monitor trends, learn about one another's experiences and harmonize initiatives. Through the federal-provincial-territorial Consumer Measures Committee (CMC), for example, governments worked together to develop harmonized cost of borrowing legislation. The CMC also provides a forum to discuss issues affecting Canadian consumers and the possibility of standardizing legislation, regulations and practices related to consumer protection. One of the CMC's current projects is the standardization of a consumer protection classification system.

Many jurisdictions also cooperate through formal or informal arrangements, such as memoranda of understanding (MOUs) and information sharing agreements, or agreements allowing for licencing or sanctioning reciprocity. The Canadian Council of Insurance Regulators, for example, allows provincial and territorial regulators to address common concerns with regard to the insurance sector. Provincial insurance regulators have signed an MOU agreeing to share information and align activities wherever possible.

Some provincial-territorial jurisdictions also engage internationally. The Financial Services Commission of Ontario and the Autorité des marchés financiers in Quebec, for example, participate directly or indirectly (through other national-level associations) in developing international regulatory policy and principles. The Autorité des marchés financiers is also an active member of other international organizations such as the International Association of Insurance Supervisors and the Institut francophone de la régulation financière. Some provincial-territorial jurisdictions have also entered into MOUs with foreign jurisdictions in order to collaborate and enhance supervision and enforcement. The Ontario Securities Commission, for instance, has signed a new cooperation agreement with the United Kingdom's Financial Conduct Authority to support the fintech sector.

Continued cooperation can be expected as a result of discussions regarding a national securities regulator (Capital Markets Regulatory Authority) and a recently announced internal trade agreement (the Canadian Free Trade Agreement), which provides that the CMC will "identify opportunities, and facilitate processes, for the reconciliation of consumer-related regulatory measures."[36]

[36] Canadian Free Trade Agreement. (2017). *Canadian Free Trade Agreement: Consolidated Version*. Retrieved from: http://www.ait.ca/wp-content/uploads/2017/04/CFTA-Consolidated-Text-Final-Signed-English.pdf

III. International landscape

In recent years, financial consumer protection has become more prominent in international discussions on financial regulation and consumer education. International standards outlined in the G20 High-Level Principles and related documents, and the World Bank's *Good Practices for Financial Consumer Protection* cover a broad range of topics concerning consumer protection within the financial sector and serve as assessment tools to build effective consumer protection regimes. The standards that fit within the scope of this review can be broken down into six main themes:[37]

- regulatory framework
- oversight bodies and institutional arrangements
- business conduct and the treatment of consumers
- disclosure and transparency
- complaint-handling and redress mechanisms
- financial literacy, consumer education and consumer awareness.

Below, we summarize the relevant sections of the G20 High-Level Principles and the World Bank's *Good Practices for Financial Consumer Protection.*

Legal, regulatory and supervisory framework

International standards highlight the importance of financial consumer protection as part of the financial sector framework.

The legal framework, which encompasses laws, acts, regulations and codes, should outline "clear consumer protection rules regarding financial products and services."[38] Strong and effective legal mechanisms should be in place to protect financial consumers from fraud, abuses and errors. The legal framework should be suitable and appropriate for the size, complexity and makeup of the respective financial sector, and cover oversight authorities' role, financial literacy and education, access to financial products and services, disclosure and complaint-handling mechanisms, among others.

Oversight bodies, institutional arrangements

According to these standards, independent regulators with clearly defined responsibilities, and adequate resources and powers, should be explicitly responsible for financial consumer protection. Cooperation between the various oversight authorities, nationally and internationally, should be encouraged.

---

[37] Other themes covered by the G20 High-Level Principles and the World Bank's *Good Practices for Financial Consumer Protection* include competition, data protection and privacy, customer account handling and maintenance, and guarantee and compensation schemes (in case of a financial institution's financial distress).

[38] The World Bank. (2012). Common Good Practices for Financial Consumer Protection. In *Good Practices for Financial Consumer Protection* (p. 7). Retrieved from: http://siteresources.worldbank.org/EXTFINANCIALSECTOR/Resources/Good_Practices_for_Financial_CP.pdf

The policy-making process is also key to ensuring strong financial consumer protection. Stakeholders, such as regulators, industry and consumer groups, should be involved in the policy development process. Where possible, financial consumer protection measures should be tested.

Business conduct and the treatment of consumers

Equitable and fair treatment is one of the key principles in the G20 High-Level Principles. Consumers should be treated fairly and in a non-coercive manner. Products and services should be suitable for consumers and sold based on each consumer's individual circumstances; staff should be adequately trained and knowledgeable; and consumer assets should be protected from fraud and misuse. Financial institutions are urged to work in the best interest of consumers and to pay particular attention to vulnerable groups.

According to the G20 High-Level Principles, remuneration and other compensation should be structured in a manner that promotes the fair treatment of consumers and responsible business conduct and that avoids conflicts of interest. Consumers should be informed when conflicts of interest cannot be avoided.

The World Bank's *Good Practices for Financial Consumer Protection* paper recommends the adoption of a cooling-off period of at least 3-5 days for "financial products or services with a long-term savings component, or those subject to high-pressure sales contracts."[39] The cooling-off period could be explicitly waived by the consumer.

Disclosure and transparency

Consumers should receive information about the "fundamental benefits, risks and terms of the [financial] product."[40] All necessary information should be accurate and not misleading, and disclosed to consumers in a manner that is useful to them, with key information highlighted. Disclosure should be written in plain language and written in a way that facilitates comparisons (i.e., standardized format). Information summaries are also encouraged. The World Bank, for example, says that "[a] bank should have a summary statement, such as a Key Facts Statement, for each of its accounts, types of loans or other products or services and provide these to its customers and potential customers."[41]

---

[39] The World Bank. (2012). Good Practices for Financial Consumer Protection by Financial Service. In *Good Practices for Financial Consumer Protection* (p. 14).
[40] G20-OECD Task Force on Financial Consumer Protection. (2011). *G20 High-Level Principles on Financial Consumer Protection* (Principle 4).
[41] The World Bank. (2012). Good Practices for Financial Consumer Protection by Financial Service. In *Good Practices for Financial Consumer Protection* (p. 17).

Complaint-handling, dispute resolution and redress mechanisms

Complaint-handling procedures and redress mechanisms available to consumer should be affordable, independent, and fair. According to the World Bank's *Good Practices for Financial Consumer Protection,* "the judiciary should be an effective final arbiter" for dispute resolution.[42]

Consumer complaints often contain valuable information that help target and improve market deficiencies, bad practices or emerging risks. By analyzing complaints, regulators and financial institutions can address risky or potentially harmful practices before issues arise or worsen.

Financial literacy, consumer education and consumer awareness

Financial literacy plays a key role in consumer protection. Knowledgeable, skilled and confident financial consumers can better understand the risks and benefits of financial products and services and can make more informed decisions. An institution should be appointed to lead and coordinate financial literacy initiatives and relevant stakeholders should work to develop and promote financial literacy.

[42] The World Bank. (2012). Good Practices for Financial Consumer Protection by Financial Service. In *Good Practices for Financial Consumer Protection* (p. 13).

IV. Federal landscape

A. Current landscape

Federally, the Minister of Finance is responsible for federal financial sector policy and the four federal financial sector oversight bodies:

Office of the Superintendent of Financial Institutions (OSFI)
OSFI undertakes prudential regulation and supervision of federally regulated financial institutions.

Bank of Canada
The Bank of Canada provides liquidity to the financial system; oversees payment, clearing and settlement systems; and assesses risks to financial system stability.

Canada Deposit Insurance Corporation (CDIC)
CDIC is the federal deposit insurer and resolution authority for federally regulated deposit-taking institutions.

Financial Consumer Agency of Canada (FCAC)
FCAC supervises federally regulated financial entities (FRFEs) to ensure they comply with their market conduct obligations and works toward strengthening the financial literacy of Canadians.

FCAC was created in 2001, as a result of a public consultation on financial sector reform in Canada. The consultation was initiated with the creation of the *Task Force on the Future of the Canadian Financial Services Sector* (known as the MacKay Task Force) in 1996. The Task Force's report, entitled *Change, Challenge, Opportunity,* concluded that financial consumer protection and financial education frameworks in place at that time were inefficient, owing to responsibilities being dispersed amongst various departments and agencies. The Government of Canada responded to the Task Force's findings by creating FCAC, an agency responsible for financial consumer protection and financial education.

B. Institutional arrangements

FCAC leads financial consumer protection at the federal level by overseeing the market conduct of federally regulated financial entities, educating financial consumers about their rights and responsibilities, and strengthening the financial literacy of Canadians. It derives its mandate from the *Financial Consumer Agency of Canada Act*.[43]

[43] Financial Consumer Agency of Canada Act (S.C. 2001, c. 9). Retrieved from: http://laws-lois.justice.gc.ca/eng/acts/F-11.1/

FCAC is led by a Commissioner who reports annually to Parliament through the Minister of Finance. To fulfil FCAC's role as financial educator, the Government appointed a Financial Literacy Leader, who acts under the instructions of the Commissioner, to coordinate the Agency's efforts to strengthen the financial literacy of Canadians.

The FCAC Supervision and Promotion Branch pursues its supervisory objectives through the activities of its two divisions: the Supervision and Enforcement Division and the Promotion and Policy Division.

As Canada's financial consumer protection regulator, FCAC works closely with the Department of Finance by providing subject matter expertise on topics related to financial consumers. FCAC also participates in the Senior Advisory Committee (SAC), which is comprised of the four federal financial sector oversight bodies and the Department of Finance, and which provides policy advice related to the financial sector to the Minister of Finance. Moreover, FCAC participates in the Financial Institutions Supervisory Committee (FISC), which serves as a forum for information exchange on supervisory issues regarding federal financial institutions.

a) Funding

Operational costs for the Agency are recovered through the assessment of the financial entities it supervises, except for statutory expenditures from the federal government to support financial literacy initiatives.

b) Policy-making authority

The Minister is responsible for introducing legislative changes to the *Bank Act* in Parliament, and associated regulations in Cabinet. Legislative changes to the *Bank Act* typically follow a consultative process, which includes active engagement and coordination with industry, consumer associations and other key stakeholders. The Department of Finance, on behalf of the Minister, also works with stakeholders to develop voluntary codes of conduct and public commitments. FCAC collaborates with and contributes to the Department of Finance's financial consumer protection policy development mandate.

C. Supervised entities

FCAC supervises 353 entities, with a significant portion of its supervisory activity focused on federal deposit-taking institutions. FCAC oversees:

Federally regulated financial institutions (FRFIs)
FRFIs include banks, federally regulated credit unions, insurance companies, trust and loan companies, and retail associations.

External complaints bodies (ECBs)
ECBs are arms-length non-governmental organizations approved by the Minister of Finance under the *Bank Act* to handle escalated consumer complaints related to products and services offered by their member banks. Every bank or federal credit union must be a member of an ECB.

Payment cards network operators (PCNOs)
PCNOs operate or manage payment card networks by establishing standards and procedures for the acceptance, transmission or processing of payment transactions and by facilitating the electronic transfer of information and funds. PCNOs establish rules and controls that govern the participants of the credit and debit card networks.

Federal financial institutions are incorporated in accordance with the *Bank Act*, the *Cooperative Credit Associations Act*, the *Insurance Companies Act* or the *Trust and Loan Companies Act*. The consumer provisions in each statute generally mirror one another, with some additional obligations imposed on banks.

For the purpose of this report, we refer to banks and to the *Bank Act*, but our findings also apply to the other FRFI statutes.

D. Financial consumer protection measures in legislation, codes and commitments

Banks are subject to the consumer protection measures outlined in the *Bank Act* and associated regulations, voluntary codes of conduct, and public commitments.[44] These consumer protection measures:

- prescribe disclosure requirements for bank products and services
- restrict certain business practices that may harm consumers and require the observance of other business practices that benefit consumers
- establish a complaints-handling regime, including the requirement that a bank be a member of an approved ECB.

Currently, the federal financial consumer protection regime is prescriptive in nature. The *Bank Act* and the *Cost of Borrowing Regulations*, for example, set out detailed disclosure requirements for credit products, including mortgages and credit cards. Banks must disclose the required information as provided in legislation or regulation, regardless of the distribution or sales channel (e.g., via a smartphone, a computer, or by mail).

[44] Federal financial institutions are incorporated under and subject to consumer provisions in their respective statutes: the *Bank Act*, the *Cooperative Credit Associations Act*, the *Insurance Companies Act* or the *Trust and Loan Companies Act*. The consumer provisions in each statute generally mirror one another, with some additional obligations imposed on banks. For the purpose of making comparisons in this paper, only *Bank Act* will be compared, but our findings would also apply to the other FRFI statutes.

In addition to the *Bank Act* and its accompanying regulations, banks may agree to adhere to voluntary codes of conduct and public commitments. These arrangements, adopted by an industry association or bank and made public, are designed to protect the interests of financial consumers. FCAC monitors banks' adherence to voluntary codes of conduct and public commitments.

Canada's federal financial consumer protection framework has comprehensive disclosure requirements, but does not require a prominent display of key features for all financial products and services. Information boxes, which disclose key features, are currently only in place for credit products and prepaid payment products. Similarly, there is no requirement for key features to be explained orally when possible.

E. Complaint-handling procedures

a) Bank complaint-handling procedures

Under the *Bank Act*, banks are required to have complaint-handling procedures in place to respond to consumer complaints.[45] In addition, every bank is required to be a member of an approved ECB. The procedures put in place by banks to settle disputes usually consist of the following three steps:[46]

Step one: Branch or local level

Consumers are asked to communicate their problem or concern to a branch or customer representative.

Step two: Senior level, internal ombudservice or designated complaints officer

In the event the issue is not resolved to the consumer's satisfaction at step one, the consumer is referred to a more senior level employee, such as a regional manager, complaint resolution department, or internal ombudservice.

Step three: Third party review

If the issue remains unresolved to the consumer's satisfaction despite having gone through steps one and two, or if the bank takes longer than 90 days to respond, the consumer may request that the complaint be reviewed by a third party or the bank's ECB. The objective of these services is to provide impartial and prompt resolution of complaints free of charge. The ECB can recommend a non-binding resolution.

---

[45] Section 455 of the *Bank Act* (S.C. 1991, c. 46). Retrieved from: http://laws-lois.justice.gc.ca/eng/acts/B-1.01/

[46] Some banks follow a four-step complaint-handling process.

b) Consumer complaints to FCAC

Consumers may contact FCAC with their inquiries and complaints at any time, regardless of the steps taken with their bank. FCAC's Consumer Services Centre receives complaints via email, mail and telephone. It responds to all written complaints in a timely manner pursuant to established service targets. Complaints are tracked to identify trends and issues emerging from the financial sector.

The Consumer Services Centre also answers questions related to banks' complaint-handling procedures and provides information about third-party dispute resolution, as required. Complaints received by FCAC that are related to legislative provisions, voluntary codes of conduct or public commitments are sent to FCAC's Supervision and Promotion branch for triage. The Agency's mandate, does not allow FCAC to resolve individual consumer complaints. Consequently, the Agency investigates all potential breaches of the law, codes of conduct or public commitments. FCAC's focus is on ensuring that banks comply with their obligations.

For complaints related to products or services not issued by a federally regulated entity, FCAC directs consumers to the appropriate authority.

F. Supervisory approach and enforcement

The *Financial Consumer Agency of Canada Act* sets out FCAC's supervisory mandate, which includes:

- supervising regulated entities and determining whether they are complying with legislative obligations, voluntary codes of conduct and public commitments that are overseen by FCAC
- promoting the adoption by regulated entities of policies and procedures designed to implement their market conduct obligations
- monitoring and evaluating trends and emerging issues that may have an impact on financial consumers
- collaborating with other government agencies, regulators and stakeholders to foster an understanding of financial services and related issues.

a) Supervisory approach

FCAC's approach to supervision is set out in its new Supervision Framework, which illustrates FCAC's vision for robust and effective oversight that is risk-based, proactive and transparent.[47] The new Supervision Framework comes into effect in 2018.

Three pillars support the new Framework:

Pillar 1: promoting responsible market conduct

FCAC promotes responsible market conduct by communicating its expectations and interpretations early and often, using the various tools at its disposal. Through tools such as guidance and engagement with stakeholders, FCAC ensures that banks understand their market conduct obligations.

Pillar 2: monitoring market conduct

FCAC monitors market conduct through supervisory activities that provide insight into how banks are meeting their obligations. These supervisory activities include:

- requesting banks to provide any information that FCAC deems necessary to fulfil its compliance mandate
- reviewing documentation (e.g., documents for consumers, internal policies and procedures, etc.) to assess the level of compliance[48]
- conducting on-site examinations to assess individual banks' level of compliance with their market conduct obligations
- conducting a mandatory annual examination of all banks to assess their level of compliance with their market conduct obligations
- undertaking industry reviews to study widespread trends or issues, identify and examine industry practices, or verify overall levels of compliance with market conduct obligations[49]
- conducting in-person meetings and conference calls with banks to communicate expectations and share FCAC plans and priorities, as well as to learn about new products and services before they are offered to consumers
- assessing the level of compliance following the issuance of guidance or rulings.

---

[47] Financial Consumer Agency of Canada. (2017). *Supervision Framework*. Retrieved from https://www.canada.ca/en/financial-consumer-agency/services/industry/supervision-framework.html

[48] Banks are required to promptly rectify any compliance deficiencies.

[49] See, for example, Financial Consumer Agency of Canada. (2016). *Auto Finance: Market Trends*. Available at: https://www.canada.ca/content/dam/canada/financial-consumer-agency/migration/eng/resources/researchsurveys/documents/auto-finance-market-trends.pdf

FCAC assigns a senior compliance officer to each Tier 1 bank.[50] The senior compliance officer has a strong understanding of the bank's business model and establishes annual supervision plans accordingly.

The senior compliance officer acts as the primary point of contact for bank compliance officials. When required, the senior compliance officer provides input and advice on the implementation of and ongoing adherence to legislation, regulations and other rules (e.g., codes of conduct).

Through regular communication with bank officials, the senior compliance officer is able to get detailed information about a bank's compliance activities, compliance staff, internal controls, business plans, upcoming products and services, etc. Senior compliance officers also review compliance-related information collected from the banks (e.g., reportable compliance issues) to identify and discuss potential compliance concerns. Banks are expected to report certain compliance matters within a specified timeframe.

Pillar 3: enforcing market conduct obligations

Upon the identification of a potential breach of an obligation, FCAC investigates and assesses the breach. If it determines that a breach has taken place, it responds with compliance tools that range from moral suasion to AMPs.

b) Enforcement

Based on the severity of the breach, FCAC may proceed with issuing a Notice of Breach, level 1, 2 or 3. Upon receipt of a notice of breach, banks are expected to assess their policies and processes to ensure that risks are identified and mitigated and the likelihood of recurrence is minimized. Failure to undertake satisfactory corrective action or a recurrence of the breach may lead to stronger enforcement actions.

Responding to breaches of legislative obligations

Depending on the circumstances and severity of breaches of legislative obligations, FCAC may proceed with a Notice of Violation, which may be accompanied by an AMP. The maximum AMP which can be proposed is $50,000 per violation for a natural person and $500,000 per violation for all other persons. AMPs are payable to the Receiver General for Canada.

Following the receipt of a Notice of Violation, a bank is entitled to make representations to the Commissioner. If a bank choses to make representations, the Commissioner decides, on a balance of probabilities, whether a violation has been committed. Once the Commissioner determines that a violation has been committed, she may impose the AMP proposed, a lesser

[50] A bank is classified as a Tier 1 regulated entity if it sells products or services that require compliance with market conduct obligations overseen by FCAC.

AMP or no AMP at all. A bank may appeal the Commissioner's decision to the Federal Court of Canada.

In addition, the Commissioner may make public the nature of the violation, the name of the person who committed it, and the penalty imposed. Commissioner's Decisions are made available to the public once all of the proceedings with respect to the violation have been concluded, including any appeals to Federal Court. The Commissioner always makes public information about the violation and the AMP imposed. The Commissioner decides, on a case-by-case basis, whether to exercise discretion to make public the name of the financial institution.[51]

Responding to breaches of voluntary codes of conduct or public commitments

FCAC may issue a Notice of Non-Compliance when an investigation reveals that a bank has not complied with its obligations under a voluntary code of conduct or public commitment. Representations may be made to the Commissioner, who decides whether or not the entity is in non-compliance. Information about Notices of Non-Compliance is made available to the public.

Ensuring compliance through agreements

At any time during the enforcement process, FCAC may require a bank to enter into an Action Plan or Compliance Agreement specifying the corrective measures to be undertaken to address a breach, to prevent recurrence of the breach, or to implement any measure designed to further compliance with market conduct obligations. Where a Compliance Agreement is based on legislative and regulatory obligations, a breach of its provisions may give rise to a Notice of Violation. However, where a Compliance Agreement is not based on legislative obligations, a breach of its provisions only results in a Notice of Non-Compliance (which is addressed in more detail below).

[51] FCAC publishes Commissioner's Decisions according to a set of principles. See Financial Consumer Agency of Canada. (2017). Publishing Principles for FCAC Commissioner's Decisions. Available at: https://www.canada.ca/en/financial-consumer-agency/services/industry/commissioner-decisions/publishing-principles-decisions.html

G. Consumer redress model

FCAC's main role is to ensure banks comply with their consumer protection obligations. While it may use moral suasion to persuade banks when they have breached their obligations to compensate consumers, it is neither authorized to resolve individual consumer complaints, nor to order remediation. Despite not having formal redress powers, FCAC has been generally successful in obtaining redress for consumers by persuading banks to remedy breaches and make affected consumers whole.

Under the federal framework, consumers wishing to access redress must do so through the banks' complaint-handling system, its ECB or through redress mechanisms permitted by the provinces and territories. ECBs recommend non-binding resolutions to the parties and provide consumers with a cost-free and efficient alternative to the court system. As indicated above, every bank is required to be a member of an approved ECB. Each ECB must be approved by the Minister, on the Commissioner's recommendation. ECBs must be accessible, accountable, impartial, and independent, and must perform their activities in a transparent, cooperative, effective, and timely manner. FCAC supervises ECBs to ensure that they comply with regulatory requirements.

Consumers can file a complaint with their bank's ECB if

- the bank takes more than 90 days to respond to the complaint, and
- the consumer remains dissatisfied with the bank's final response to the complaint.

The ECB must provide a final written decision to the consumer, including the reasons for the decision, within 120 days after receiving all of the information required to deal with the complaint.

While ECBs must investigate individual consumer complaints, they cannot investigate systemic complaints or complaints that involve multiple consumers. ECBs must, however, advise the Commissioner without delay if a complaint raises a systemic issue. As mentioned above, ECBs' recommendations are non-binding on the parties.

H. Consumer education and awareness

FCAC's Financial Literacy Program leads federal efforts to enhance Canadians' financial literacy, through coordinated and collaborative initiatives with stakeholders that look to strengthen the financial knowledge, skills and confidence needed to help consumers make informed financial decisions.

To realize this objective, the Financial Literacy Program develops educational information, resources and tools which address topics such as banking, budgeting and money management, credit cards, mortgages, credit and loans, savings and investments, insurance, fraud and

financial rights and responsibilities. These resources are made available on the federal government's website, Canada.ca.

The Program also undertakes research to identify trends and emerging issues that may impact financial consumers, and to identify priorities and opportunities for strengthening financial literacy. As part of its research efforts, FCAC led the development of the National Research Plan for Financial Literacy (2016-2018).

The Financial Literacy Leader works with the support of the National Steering Committee on Financial Literacy to implement strategies such as *Strengthening Seniors' Financial Literacy* and the *National Strategy for Financial Literacy - Count me in, Canada*. The Financial Literacy Leader's team is responsible for organizing several key initiatives such as Financial Literacy Month (FLM), a national financial literacy conference, and a national research symposium.

I. Collaboration and engagement

Stakeholder engagement is central to FCAC's mandate. Through stakeholder engagement, FCAC improves its understanding of consumer issues and industry trends. FCAC regularly engages with regulators, industry associations, consumer groups and others to share information, resources, and best practices. In addition, the Agency regularly meets with financial institutions' boards of directors, senior executives, and officials to discuss compliance concerns and industry trends.

FCAC also engages with its provincial and territorial counterparts to execute its financial literacy and supervision mandates. For example, the Agency participates as an observer on the Consumer Measures Committee, which provides a forum for federal-provincial-territorial authorities to harmonize laws, regulations and practices, and to raise public awareness of consumer issues such as high-cost credit. FCAC also works with provincial and territorial regulatory authorities when undertaking research projects. For example, FCAC's research on payday lending adapted a survey that was conducted by the Ontario Ministry of Government and Consumer Services in 2015. FCAC shared the results of the study and sought feedback from stakeholders, including some of its provincial and territorial counterparts, on the public report summarizing the findings. Through this collaboration, FCAC complemented the work of provincial-territorial authorities by providing additional research resources and expertise, and pan-Canadian data on the use of high-cost credit.

FCAC participates in international policy discussions and dialogue with regulators in other countries, sharing market intelligence and experiences with respect to common challenges. For example, the Agency participates in meetings of the G20/OECD Task Force on Financial Consumer Protection. FCAC's Commissioner also serves as chair of the International Financial Consumer Protection Organisation (FinCoNet). Established in 2013, FinCoNet is an international organisation of supervisory authorities which have responsibility for financial consumer protection. FinCoNet promotes sound market conduct and strong consumer protection through

efficient and effective financial market conduct supervision. The Financial Literacy Leader represents Canada on the International Network on Financial Education advisory board and technical committee.

Finally, many regional provincial bodies, including financial literacy networks and members of the National Steering Committee, collaborate with FCAC to implement the National Strategy for Financial Literacy.

V. Findings and observations

FCAC compared Canada's federal financial consumer protection framework to best practices in the protections provided to financial consumers in provincial and territorial jurisdictions. Consumer protection regimes vary across the country, including the types and levels of protection afforded to financial consumers.

FCAC also used international guidance as benchmarks, such as the G20 High-Level Principles and the World Bank *Good Practices for Financial Protection*, and found that the federal framework aligns with some of the practices recommended internationally.

The most notable disparities across jurisdictions fit into the following categories:

1) institutional arrangements
2) protection measures afforded to consumers
3) alternative dispute resolution systems
4) enforcement powers
5) redress mechanisms

FCAC identified 11 best practices in its review of consumer protection regimes. These best practices are grouped under the five categories listed above, and described in the section that follows.

a) Institutional arrangements

Best practice
1. A regulator specializes in financial consumer protection.

Institutional arrangements for financial consumer protection oversight differ among the provinces and territories. In most provincial-territorial jurisdictions, consumer protection authorities have broad mandates to oversee general consumer protection. As a result, they must allocate their resources to a number of consumer issues, including those related to both financial and non-financial products and services. While consumer protection authorities are provided with the powers needed to fulfill their regulatory and supervisory functions, priorities and resources available may limit efforts invested in supervising financial products and services.[52] In many jurisdictions, a prudential regulator will also play a role in supervising financial sector market conduct, despite having as its main objective to ensure the safety and soundness of financial institutions.

[52] Some common priorities at the provincial-territorial level include debt collection, direct selling, and mortgage brokering.

Under the federal scheme, regulators are specifically mandated with the oversight of the financial sector. FCAC is responsible for overseeing financial consumer protection measures, in accordance with Principle 2 of the G20 High-Level Principles, which advocates having an oversight body "explicitly responsible for financial consumer protection."[53]

b) Financial consumer protection measures in legislation, codes and commitments

Best practice
2. A standalone legal framework establishes clear minimum standards focused on protecting financial consumers.

According to international standards, legal frameworks should provide "clear financial consumer protection rules enshrined in national laws, acts, regulations and/or statutory or voluntary codes."[54]

Most provincial and territorial jurisdictions have provisions in their consumer protection laws that apply to all types of products and services. While these provisions may cover financial products and services generally, they are often not written specifically to address financial consumers. As a result, they may not allow for the creation of regulations specific to the financial sector, and may not take into account all aspects and types of financial products and services.

Most jurisdictions have legislation that addresses specific financial products, services or entities, including mortgage brokers, payday lending, debt collection and prepaid products, among others. In addition, provincially incorporated credit unions or *caisses populaires* are subject to provincial market conduct regulation in addition to being subject to more general provincial consumer protection legislation. Consumer measures that apply to provincially incorporated deposit-taking institutions, such as credit unions, do not apply to federally regulated banks.

The federal financial consumer protection framework, for its part, is based on standalone legislation applicable to financial entities and implemented by a regulatory agency whose sole focus is the protection of financial consumers. This arrangement allows for a greater focus on issues related to the banking sector. However, general consumer protection regimes in provinces and territories may provide higher levels of protection to consumers than are currently available under the federal regime.

---

[53] G20-OECD Task Force on Financial Consumer Protection. (2011). *G20 High-Level Principles on Financial Consumer Protection* (Principle 2).
[54] G20-OECD Task Force on Financial Consumer Protection. (2014). *Effective Approaches to Support the Implementation of the Remaining G20/OECD High-Level Principles on Financial Consumer Protection* (Institutional Arrangements Effective Approaches 1.1.1).

Best practices

3. Legislation provides for fair treatment of financial consumers at all stages of their relationship with financial service providers.

4. Legislation includes a set of enforceable principles.

According to the G20 High-Level Principles, financial consumers should be treated equitably, honestly and fairly at all stages of their relationship with financial service providers.

With the exception of New Brunswick, which does not have general consumer protection legislation, provincial-territorial consumer protection laws prohibit unfair and unconscionable acts whether they occurred before, during or after a contract was entered into. However, none mandate that consumers be treated "fairly". Provisions also exist in some provinces and territories setting out requirements or prohibitions with respect to certain contractual clauses, terms or conditions to ensure that consumers are offered appropriate products and services and are treated fairly.

The Autorité des marchés financiers is currently considering including fair treatment of consumers as an integral part of effective and efficient governance for provincially regulated financial service institutions offering credit.

The *Bank Act* prohibits specific practices such as coercive tied selling or charging for products or services without the consumer's express consent. However, there are currently no provisions requiring fair treatment of consumers or prohibiting unfair treatment.

Other OECD jurisdictions have adopted comprehensive financial consumer codes in recent years that provide for fair treatment of financial consumers and include enforceable principles.[55]

Best practices

5. Legislation requires prominent disclosure of key information.

6. Legislation prohibits misleading practices, such as misleading advertising.

Canada's federal financial consumer protection framework includes comprehensive disclosure requirements for certain products such as credit cards and loans. However, the federal framework does not require a prominent display of key features for all financial products and

[55] For example, Ireland introduced a Consumer Protection Code in 2006 "in order to ensure a similar level of protection for consumers, regardless of the type of financial services provider." Ireland later revised the Consumer Protection Code in 2012.

services as has been suggested by international benchmarks. Information boxes, which disclose key features, are currently only in place for credit products and prepaid payment products. Similarly, there is no requirement in Canada for key features to be explained orally when possible.

Cost of credit disclosure legislation is largely harmonized between provincial-territorial and federal jurisdictions, except for Quebec, Nunavut and Yukon. These legislative cost of credit requirements specify disclosure obligations with respect to fees, interest, terms and penalties on borrowed amounts, as well as when disclosure should be provided. However, the federal framework does not allow borrowers to be released from liability to pay cost-of-borrowing related charges if disclosure requirements are not met.

Provincial-territorial consumer protection laws prohibit misleading statements or representations to consumers. Employing misleading statements or representations can give rise to administrative sanctions. Consumer Protection BC, for example, has the ability to impose an AMP for any deceptive act or practice. The federal framework does not include a general provision that prohibits misleading advertising or representations to consumers. Federal legislation, however, sets out specific requirements when institutions advertise certain financial products.

c) Complaint-handling procedures

Best practice
7. Consumers can access alternative dispute resolution systems.

According to the OECD, resolving disputes "through internal complaints handling and out-of-court redress mechanism[s] is in general a quicker and cheaper alternative than seeking redress through the courts."[56] The G20 High-Level Principles also note that complaint-handling systems should "seek to promote resolution of the dispute by the parties."[57]

Some provincial-territorial consumer protection regulators provide ADR services free of charge. These regulators act as intermediaries or mediators—informally or authorized by legislation—between the consumer and a business to facilitate dispute resolution without having to resort to the court system. Mediation, for example, allows both parties to be heard by a neutral third party and to come to a mutually acceptable solution. Many regulators indicated that the outcomes of their mediation services were generally successful.

---

[56] G20-OECD Task Force on Financial Consumer Protection. (2013). *Update Report on the Work to Support the Implementation of the G20 High-Level Principles on Financial Consumer Protection* (Principle 9 Underlying assumptions).
[57] G20-OECD Task Force on Financial Consumer Protection. (2013). *Update Report on the Work to Support the Implementation of the G20 High-Level Principles on Financial Consumer Protection* (3.1.1 Complaint Handling and Redress Mechanisms Effective Approaches).

Federally, financial consumers have access to a third party dispute resolution system, but do not have access to mediation or other ADR services. ECBs recommend non-binding resolutions to the parties and provide consumers with a cost-free and efficient alternative to the court system. While not formally authorized to act as mediators by legislation, ECBs sometimes act as facilitators to assist consumers in resolving their disputes.

d) Supervisory approach and enforcement

Best Practice
8. Regulators have access to a wide range of enforcement tools to achieve compliance.

Provincial-territorial regulators generally use a graduated approach to compliance, which begins with a warning letter or the conclusion of a voluntary agreement. Depending on circumstances, regulators can impose compliance orders that require businesses to comply and the manner in which they must do so. This can include situations where compliance is not achieved through voluntary means or cases where the non-compliance is egregious. In certain jurisdictions, regulators may take administrative enforcement action that can result in the issuance of an AMP. In some cases, regulators can also suspend or revoke a licence. For the most serious breaches, some regulators have authority to seek injunctive relief or pursue prosecution.

FCAC also responds to breaches of market conduct obligations with a graduated enforcement approach. For example, it can initially pursue voluntary compliance by issuing a Notice of Breach (warning letter) or by entering into an Action Plan or Compliance Agreement. Depending on the severity of the breach, FCAC may issue a Notice of Violation and impose an AMP.

While FCAC has a number of enforcement tools at its disposal, it does not have the authority to compel compliance. When a breach is identified, FCAC is limited to imposing a violation, an AMP, and potentially making public the name of the institution.

In the past, FCAC has resorted to moral suasion in an effort to convince financial institutions to affect redress. While moral suasion has allowed FCAC to obtain results, as financial sector legislation moves towards a principles-based approach, there is no guarantee that FCAC will achieve the same level of success in the future.

Best practice

9. Regulators are transparent with consumers by communicating information about complaints, investigations and enforcement.

Transparency increases consumers' ability to make informed decisions and serves as a deterrent for financial institutions.

Many provincial-territorial consumer protection regulators inform consumers about the status and outcome of their complaint. FCAC does not inform individual consumers about the outcome of investigations regarding their complaint because it must keep information confidential, as required by legislation.[58] FCAC publishes aggregate information about complaints received, and uses complaint information to inform supervision, research, and consumer education and awareness activities.

Some provincial and territorial regulators are required by law to publish all enforcement actions, including the violator's name, the nature of the violation, and the penalty imposed. All published enforcement actions are available in a centralized register on the regulator's website. In Alberta and Ontario, the consumer protection regulators are required to keep a public register that includes information on enforcement actions such as:

- voluntary undertakings
- compliance orders
- AMPs
- court orders
- prosecutions.

At the federal level, the Commissioner has the discretion to make public the nature of a violation, the name of the person who committed it, and the penalty imposed.

[58] According to section 17 of the *FCAC Act*. Available at http://laws-lois.justice.gc.ca/eng/acts/F-11.1/

e) Consumer redress models

Best practice
10. Consumers have access to affordable, independent and impartial redress mechanisms.

The G20 High-Level Principles indicate that, while alternative dispute resolution systems should be available, these should not preclude consumers from seeking redress through the courts.

At both the federal and the provincial-territorial levels, consumers are encouraged to first seek redress through their financial institutions' complaint-handling process.

Provinces and territories provide consumers with access to a much wider range of redress mechanisms. Some regulators also offer formal or informal mediation services to assist consumers and businesses with the resolution of their disputes. In Quebec, consumers who contact the Office de la protection du consommateur can obtain an information kit to help them resolve disputes with merchants.

Many regulators monitor activities arising from consumer complaints, which can result in direct interventions with businesses. In some provincial-territorial jurisdictions, such as Alberta, the regulator can proceed with legal actions on behalf of consumers. In Quebec, the President of the Office de la protection du consommateur can intervene in court proceedings, for example, to revoke a business's licence.

Provincial-territorial laws provide consumers with statutory rights to resolve disputes through the court system. In the majority of jurisdictions, claims can be pursued individually by consumers or by a class of consumers.

The *Bank Act* and other federal financial institution statutes do not provide a statutory right of action to consumers. Consumers can use the third party dispute system to seek redress on an individual basis, but the recommendations of third party complaint bodies do not extend to classes of consumers.

Best practice
11. Consumers can access different remedies if financial institutions do not comply with their consumer protection obligations.

Provincial-territorial consumer protection laws include provisions allowing consumers access to various remedies if businesses have not complied with their obligations. Depending on the legislation and how it applies to specific financial products and services, consumers may be able to access remedies including contract cancellation, contract variation, damages and restitution.

In some provincial-territorial jurisdictions, regulators can order businesses to comply with the legislation. Furthermore, in British Columbia and Alberta, the regulator can commence legal proceedings on behalf of consumers to obtain redress.

FCAC does not have the authority to order compliance or redress, and therefore resorts to moral suasion and regulated entities' cooperation to ensure they correct their breach and remediate consumers.

f) Collaboration and engagement

Provincial-territorial regulators have MOUs with one another to facilitate supervision and information sharing. The provincial-territorial insurance regulators, for example, participate in the Canadian Council of Insurance Regulators, which allows provincial and territorial regulators to address common concerns in the areas of insurance. Each insurance regulator signs an MOU agreeing to share information and aligns its activities whenever possible. Likewise, a number of provincial-territorial credit union prudential regulators and deposit insurers participate in the Credit Union Prudential Supervisors Association, which provides a forum for its members to coordinate and collaborate.

While FCAC can collaborate with its provincial and territorial counterparts, any MOU, arrangement or agreement requires Cabinet approval.

VI. Conclusion

Financial consumer protection has become a priority for policymakers and regulators over the last decade. In Canada, responsibilities with respect to financial consumer protection are exercised by 14 jurisdictions, with frameworks and practices varying among provinces, territories and the federal regime.

The objective of this review was to assess provincial and territorial consumer protection frameworks and identify protections afforded to financial consumers, examine the oversight and enforcement tools to monitor compliance, and consider the efficiency, timeliness and equitableness of complaint-handling and redress mechanisms.

The review identified several best practices already in place at the federal level. The federal regime is comprised of a single agency, whose mandate is dedicated to financial consumer protection by overseeing financial consumer protection measures, enhancing financial literacy, and promoting consumer education and awareness. FCAC's proactive supervisory approach provides in-depth insight into banks' practices and allows it to seek to address issues promptly. This is in contrast to provincial-territorial regimes, where regulators overseeing general consumer protection legislation are largely reactive, focusing their monitoring and enforcement activities largely on incoming complaints.

The review also identified best practices emanating from provincial, territorial and international regimes. For example, provincial-territorial regulators have access to a broader range of enforcement tools, including compliance and court orders. Moreover, provincial-territorial legislation often prohibits unfair practices and provides consumers with access to redress mechanisms and remedies that are unavailable under the federal scheme. Some of these elements could be introduced in the federal scheme to further enhance the financial consumer protection framework.

VII. Appendix – List of provincial and territorial authorities contacted

Provinces and territories	Authorities contacted
Alberta	Service Alberta
British Columbia	Financial Institutions Commission Consumer Protection BC Ministry of Finance Ministry of Public Safety & Solicitor General
Manitoba	Manitoba Financial Services Agency Office of Consumer Protection (Manitoba Justice)
New Brunswick	Financial and Consumer Services Commission
Newfoundland and Labrador	Service NL
Northwest Territories	Municipal and Community Affairs
Nova Scotia	Service Nova Scotia
Nunavut[59]	Department of Community and Government Services
Ontario	Financial Services Commission of Ontario Ministry of Government and Consumer Services
Prince Edward Island	Justice and Public Safety
Quebec	Autorité des marchés financiers Office de la protection du consommateur
Saskatchewan	Financial and Consumer Affairs Authority
Yukon	Department of Community Services

[59] FCAC was unable to meet with representatives from Nunavut's Department of Community and Government Services.